REMARKS

In the Office Action of April 6, 2009, the Examiner rejected Claims 18-24 and 27-28 under 35 U.S.C. § 101, as being directed to non-statutory subject matter. The Examiner also rejected Claims 18-28 under 35 U.S.C. § 103(a), as being obvious over U.S. Pat. No. 6,418,419 ("Nieboer") in view of U.S. Pat. Pub. No. 2001/0049651 ("Selleck"). Applicants respectfully request reconsideration of the rejections of Claims 18-28.

I. Examiner Interview

On Wednesday, July 1, 2009, the Applicants' Attorney, Scott Timmerman, interviewed Examiner Samuel Weis. The Applicants appreciate the Examiner's time for the interview. The 101 rejections were discussed.

II. § 101 REJECTIONS

The Examiner rejected Claims 18-24 and 27-28 as being directed to non-statutory subject matter. Applicants have obviated the rejection with appropriate amendments to the claims.

III. § 103 REJECTIONS

The Examiner rejected Claims 18-28 under 35 U.S.C. § 103(a), as being obvious over Nieboer in view of Selleck.

Nieboer relates to an automated system for conditional order transactions. Nieboer, Abstract. The system will match buy and sell orders with other markets to execute transactions according the conditions of the conditional offer. *Id.* Nieboer discloses that "[t]he invention, in general, will allow the input and display of these orders, and will execute transactions if all of the conditions to each order are met." *Id.* at Col. 15, ll. 65-67.

Selleck relates to a global trading system that operates a virtual marketplace for trading of instruments. Selleck, Abstract. The global exchange can reduce unnecessary market fluctuations that are seen in the final hours of a trading day with a built-in hedging

mechanism. *Id.* at ¶247. "[I]nstitutions trading in actual products [can] trade and hedge themselves during times when the traditional market is closed." *Id.*

A. Claims 18-24

Claims 18-24 relate to a system that mitigates the effects of rises or falls in market prices caused by the execution of a conditional order. The system includes a spike control processor that delays the matching of orders when an execution price of the conditional order lies outside of a predefined price threshold and that compares an indicative opening price to the predetermined price threshold. The indicative opening price is adjusted by orders requested while the market is not open. The system further includes an open market processor that opens the market when the indicative opening price lies within the predetermined price threshold. The market is reserved when the indicative opening price lies outside of the predetermined price threshold.

The combination of Nieboer and Selleck fail to disclose delaying the matching of orders when an execution price of a conditional order lies outside of a predefined price threshold in claims 18-24. Nieboer does disclose conditional orders in which the condition may include a range of prices. *Id.* at Col. 15, ll. 55-64 and Col. 17, l. 59 – Col. 18, l. 9. The condition is satisfied and the order is matched when the price is within the threshold. However, Nieboer fails to disclose a predefined price threshold by which the system delays matching orders. Further, Nieboer discloses a conditional offer in which the transaction is in effect for a time period after which the offer expires. *Id.* at Col. 15, ll. 55-60. Accordingly, the trader includes the condition of a time period and the condition of a price range as part of the conditional order in Nieboer. However, the system in Nieboer does not include a predefined price threshold by which the system delays matching orders.

The combination of Nieboer and Selleck fail to disclose an indicative opening price that is adjusted by orders requested while the market is not open, and that determines whether the market is reserved or opened. In particular, the claims recite that the market is reserved when the indicative opening price is outside the threshold, but the market is opened when the price is within the threshold. Selleck discloses a global exchange to reduce unnecessary market fluctuations that are seen in the final hours of a trading day with a built-in hedging mechanism, such that "institutions trading in actual products [can] trade and

hedge themselves during times when the traditional market is closed." Selleck, ¶247. Although, the exchange in Selleck includes trades when the market is closed, there is no disclosure that the market is opened when the indicative opening price lies within the predetermined price threshold as claimed. Likewise, there is no disclosure that the market is reserved when the indicative opening price lies outside of the predetermined price threshold as claimed. Conversely, Selleck's trading during market closure does not contemplate opening or reserving the market based on the indicative opening price. Nieboer merely discloses general conditional offer transactions regardless of whether the market is opened or reserved. Nieboer, Col. 15, l. 50 – Col. 16, l. 7 and Col. 2, l. 2 – Col. 4, l. 29.

Indeed, the combination of Nieboer and Selleck fails to contemplate a reserve state of as claimed. In particular, the market is reserved when the indicative opening price lies outside of the predetermined price threshold. Nieboer contemplates conditional orders that execute upon satisfaction of an order, but a conditional order is not in a reserved state as claimed.

B. Claims 25-26

Claims 25-26 relate to mitigating the effect of a market spike caused by a conditional order. The matching of orders is delayed when the execution price is outside a predefined range. Further, the matching of orders is delayed until the opening price lies within a second predefined price range or a time period lapses. The combination of Nieboer and Selleck fail to disclose a matching delay when the execution is outside of a predefined range. As discussed above, Nieboer discloses conditional orders in which the condition may include a range of prices. *Id.* at Col. 15, ll. 55-64 and Col. 17, l. 59 – Col. 18, l. 9. Although, the condition is satisfied and the order is matched when the price is within the threshold, there is no predefined price threshold by which the system delays matching orders as claimed. *Id.*

In addition, the combination of Nieboer and Selleck also fails to disclose a second predefined range by which matches are delayed as claimed. As discussed above, the combination does not contemplate delaying the matching of orders when the execution price is outside a predefined range, and further that the matches are delayed until the opening price lies within a second predefined price range or a time period lapses as claimed.

C. Claim 27

Claim 27 relates to a signal bearing medium for mitigating the effect of a market spike caused by a conditional order. A delay logic delays the matching of orders when the transaction price is outside of a predefined price range. A timing logic uses a time interval to delay order matching until the opening price is within a predefined price range up to a maximum delay time.

The combination of Nieboer and Selleck fails to disclose establishing a reserved state for the submitted orders and fails to disclose that the reserved state is removed and the market is opened when the opening price is within a predefined price range as claimed. As discussed above, the combination does not contemplate a reserve state of as claimed. The conditional orders of Nieboer are not in a reserved state that is then removed and the market opened when the opening price is within a predefined price range.

The combination of Nieboer and Selleck also fails to disclose a matching delay when the execution is outside of a predefined range. In addition, the combination does not disclose a delaying matching until an opening price is within a predefined price range and where the delay is up to a maximum delay time. Nieboer describes conditional orders where the condition may include a time during which the transaction is valid (e.g. 30 minutes). Nieboer, Col. 15, ll. 55-57. However, the time during which the conditional order is open is not a delay and does not depend on whether the opening price is within a predefined price range up to a maximum delay time as claimed.

D. Claim 28

Claim 28 relates to a method for mitigating the effect of a market spike caused by a conditional order. The matching of orders is delayed when the execution price is outside a predefined range. Further, the matching of orders is delayed until the opening price is within a predefined price range up to a maximum delay time. As discussed above, the combination of Nieboer and Selleck fail to disclose a matching delay when the execution is outside of a predefined range. As further discussed above, the combination also fails to disclose delaying matching until an opening price is within a predefined price range and where the delay is up to a maximum delay time.

IV. CONCLUSION

Applicants respectfully submit that all of the pending claims are in condition for allowance and seeks early allowance thereof. If for any reason, the Examiner is unable to allow the application but believes that an interview would be helpful to resolve any issues, Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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Date

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